IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1541 OF 2002

M/s.National Textile Corporation
(Maharashtra North) Limited,
Unit : Kohinoor Mills ..Petitioner.

Vs.

Shi.Ramesh D. Thakkar & Ors. ..Respondents.

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Mr.Shailesh More with Mr.S.M.Naik for the Petitioner.

Mr.P.M.Patil for Respondent No.1.

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CORAM : DR.D.Y.CHANDRACHUD, J.

12th April, 2005.

P.C. :

1. The Industrial Court has allowed a complaint under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 and has directed the Petitioner to grant to the First Respondent all his arrears of salary together with attendant benefits with effect from 30th June, 1990 until the

date on which the Petitioner is allowed to resume his duties. A direction to allow the First Respondent to resume his duties has also been issued. The case of the First Respondent can best be elucidated from his deposition in the examination-in-chief which was as follows :

> "I joined services of the Kohinoor Mill as a Badli clerk on the 26th March year 1969. In the year 1974 I was made permanent. I worked upto 17th January 1982 in Kohinoor Mill. From 18th January 82 there was strike in the Kohinoor Mill. I did not participate in the said strike. During the strike period I was reporting for duty, however, I was prohibited by the Mill. I was repeatedly attending the Mills however, I was prohibited by the mill to resume duty, therefore I had visited the G.M. of the Kohinoor Mill one Mr.Kapoor. Even from July 90 onwards I was attending office of the mill, however no work was allotted to me. Nothing is informed by the Kohinoor mill till today to me either about my

> termination of my service or about my allowing to join duty. I had filed an application before the Labour Court for recovery of wages which is decided in my favour. I have filed this complaint for wages and benefit onwards from 1990. Similarly I prayed that respondent be directed to assign the work."

2. The Petitioner declined to carry out any cross examination. The sole witness who deposed on behalf of the Petitioner admitted that the First Respondent was working in the weaving department of the mill. Then there was an admission that another clerk was appointed in place of the First Respondent. The witness stated that he was unaware as to whether the First Respondent was reporting for duty and that the mill declined to provide him with work.

3. On this evidence, the finding which is arrived at by the Industrial Court is not capable of being assailed. Admittedly, the First Respondent was in the employment of the erstwhile Kohinoor Mills till 17th January 1982 when there was a general strike

in the textile industry. The First Respondent deposed that he was reporting for work at the mill, but was prohibited from resuming duties. Admittedly, there has been no cessation of the relationship of employer and employee and the services of the First Respondent have not been terminated. In view of the subsistence of the contract of employment, the order directing the Petitioner to provide work to the First Respondent and to pay him his arrears of salary cannot be faulted. The arrears of salary, it must be noted, have been directed to be paid with effect from 30th June, 1990. No arrears have been granted for the period between 1982 and 1990. The complaint was filed before the Industrial Court on 28th August, 1990 and was pending since then until it came to be disposed of by the impugned order dated 8th September, 2000.

4. Counsel appearing on behalf of the Petitioner sought to rely upon the judgment of a learned Single Judge of this Court in S.D.Phansekar v. N.T.C. (1997 II CLR 801). The judgment of the Learned Single Judge holds that in a proceeding under Section 33-C(2) of the Industrial Disputes

Act, 1947, matters involving the determination of rights and liabilities could not be enquired into. That judgment cannot be of any assistance in the facts of this case. In the present case, the judgment of the Industrial Court is rendered in a substantive proceeding in a complaint of unfair labour practice on the part of the First Respondent under item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The refusal of the First Respondent to provide work despite the subsistence of the contract of employment clearly falls within the purview of a breach of the mandatory provisions of the Industrial Disputes Act, 1947 and a breach of the contract of employment. This therefore, can form the subject matter of a complaint under item 9 of Schedule IV. In NTC v. RMMS ((1993) I LLJ 954) the Supreme Court held that the recital in the Nationalisation Act of 1983 made it clear that one of the principal objects was to protect the interests of workmen who were already employed in the textile mills. The Supreme Court held thus :

"The said provisions state that if the

> contract of employment of a workman is to be terminated, the custodian can do so if he is of the opinion that it is unduly onerous. However, while terminating the contract, he has to give one month's notice in writing or salary or wages, as the case may be, for one month in lieu of the notice. This provision is consistent with the object of the Act and also with the provisions of the I.D.Act. It is, therefore, amply clear that Section 3(3) and 3(4) do not have the effect of terminating the contract of employment of the workmen. It is also not disputed that neither the custodian nor the appellants who stepped into his shoes had at any time put an end to the contract of employment of any of the workmen involved in the present dispute in pursuance to the provisions of Section 13."

These observations were relied upon in a decision of this Court in National Textile Corporation (Maharashtra North) Limited v. Anant Parshuram Joshi (2000 III CLR 429).

5. The order passed by the Industrial Court is, for these reasons, manifestly correct and does not call for any interference in the exercise of the supervisory jurisdiction. The Petition is accordingly rejected.